COURT FEE 5 Rs. भारत INDIA पाँच रुपये FIVE RUPEES CANCELLED

COURT FEE 20 Rs. भारत INDIA बीस रुपये TWENTY RUPEES

C.E. Re 25.00 3316

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR MP

M.P.No. 2166 of 1992

D.B. (Civil)

Petitioner : Ram Kripal Shankh, aged 48 years son of Shri Hiraram Shankha, Lower Division Clerk, Municipal Council, Arang, District Raipur, M.P.

Vs.

Respondents: (1) The State of Madhya Pradesh, through the Secretary, Local Self Govt. Department, Govt. of M.P., Vallabh Bhawan, Bhopal, M.P.

(2) Commissioner, Revenue Division Raipur, M.P.

(3) Collector, Raipur, District Raipur, M.P.

(4) Municipal Council, Arang, Distt. Raipur, through its Chief Municipal Officer, Raipur, M.P.

HIGH COURT COMMISSION

PETITION UNDER ARTS. 226/227 OF THE CONSTITUTION OF INDIA FOR APPROPRIATE WRITS OR ORDERS OR DIRECTIONS

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR
W. P. No. 2166 of 1992

Petitioner — Ram Kripal Shankh

Versus

Respondents — State of Madhya Pradesh, through the Secretary & others

SB: Hon'ble Mr. Justice Satish K. Agnihotri, J

Shri R.P. Kosaria, counsel for the petitioner.

Shri Arun Sao, Deputy Government Advocate for the respondents No. 1, 2 and 3/State.

None appears for the respondent No. 4

ORDER

(27th November, 2006)

The following order of the Court is passed by Satish K. Agnihotri, J.

1. The petitioner was appointed in the office of the Municipal Council, Arang, District Raipur as Lower Division Clerk on 15.2.1974 and thereafter, he was confirmed on the said post.
2. By order dated 5.4.1982 (Annexure P/1), the petitioner was placed under suspension on the ground that he has mislead the officers and embezzled the fund by not depositing the same in the treasury.

(80)

3. The petitioner was served with a charge-sheet along with the memorandum of charges. The petitioner filed his reply to the charge-sheet, on 21.7.1982.

4. The enquiry officer was appointed on 7.10.1982. After completion of enquiry, a show cause notice was given on 10.8.1983 (Annexure P/2) as to why the petitioner should not be dismissed from service. The petitioner appeared before the Administrator and submitted his reply. After considering the reply of the petitioner, one more show cause notice dated 27.4.1987 (Annexure P/4) was issued, proposing following punishment,

> "1. नगरपालिका परिषद के हित की समस्त निधि की क्षति आपसे वसूल की जावे। जो प्रथम दृष्टया लगभग 333=50 पैसे होती है।
>
> 2. आपको निलम्बन की तारीख में मिल रहे वेतन और नोटिस की अवधि जो यह जारी किया जा रहा है। तबकि समस्त वेतन वृध्दियॉं रोका जाना है। जिसका पश्चात्य वर्ती प्रभाव होगा।
>
> 3. आपके द्वारा किये गये कदाचरण की प्रविष्ट भी सर्विस राल वार्निंग दी जावें।"

The petitioner submitted his reply on 29.4.1987 (Annexure P/5).

5. The Disciplinary Officer i.e. Chief Municipal Officer, Municipal Council, Arang, by order dated 28.5.87 (Annexure P/6), imposed the penalty of withholding increments and directing the petitioner to deposit embezzled amount of Rs. 333=50 and

suspension of increments during the period of suspension on permanent basis.

6. Being aggrieved, the petitioner preferred an appeal before the Collector, Raipur, being Appeal No. 35/B/121/Year 86-87. The Collector, by order dated 15.3.1989 (Annexure P/7), confirmed the finding recorded by the disciplinary officer and punishment imposed by the disciplinary officer holding that looking into the gravity of the charges, the punishment imposed was not excessive. This appeal was dismissed.

7. The petitioner further preferred an appeal before the Commissioner, Raipur, Division Raipur. The Commissioner, by order dated 21st August, 1990 (Annexure P/8), allowed the appeal in part, holding that only one increment during the period of suspension would be withheld and the petitioner would be entitled to subsistence allowance only during the period of suspension. The other part of the punishment was upheld.

8. Being aggrieved, the petitioner has filed this writ petition impugning the order dated 21st August, 1990 (Annexure P/8) passed by the Commissioner, Raipur, whereby the punishment imposed on the petitioner was amended to the extent that the pay revisions which was not allowed by the disciplinary authority and the Collector, was modified and only one increment was

withheld, but it was held that the petitioner was not entitled to full payment of his salary, during the suspension period.

9. It is well settled principle of law that this Court while exercising its jurisdiction under Article 226/227 of the Constitution of India has limited jurisdiction to the extent of reviewing the case, in the event, there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

10. The Supreme Court in the case of **V. Ramana Vs. A.P. SRTC and others**[1] after having considered the dicta laid down in the case of **B.C. Chaturvedi Vs. Union of India** {(1995) 6 SCC 749}, **Union of India Vs. G. Ganayutham** {(1997) 7 SCC 463} and other cases, observed in para 11, as under:-

> "11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case[4] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision."

11. After hearing learned counsel for the parties, this is not the case of the petitioner that there was any perversity, irregularity, illegality or impropriety in the enquiry. The petitioner seems to be aggrieved by the order of the Commissioner, whereby withholding one increment was confirmed and it was held that the petitioner would not be entitled to full payment during the suspension period.

12. Having regard to the facts and circumstances of the case when there is serious allegation of embezzlement of fund, the punishment imposed by the Commissioner does not seem to be excessive.

13. For the reasons stated-above, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu

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[1]{(2005) 7 SCC 338}